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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,447	11/09/2001	Gregory R. Brotz	112685	5481

7590 02/26/2003

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EXAMINER

COLLINS, TIMOTHY D

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,447

Applicant(s)

BROTZ, GREGORY R.

Examiner

Timothy D Collins

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 1/2/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of USPN 6,318,666 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 2-22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how one would make or use this device, it appears to rely on circuitry to provide for the control of the superconducting effects. However modern circuits cannot control what parts of a superconductor will breakdown first and what parts of a superconductor will remain superconductive. More information on these subjects is necessary. It is also not clear how the materials in this device are to interact with the geomagnetic field of the earth, because no known superconductive materials are sensitive enough to be levitated by the earth's magnetic field.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-22 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The invention is inoperative because no superconductive materials are known to exist that are sensitive enough to be levitated by the earth's geomagnetic field. Also modern circuits cannot control what parts of superconductors breakdown first and what parts will remain superconductive. Therefore it is uncontrollable as well. Because of the above it is asserted by the examiner that the invention is inoperative and will not function. Therefore the examiner requires a working model if prosecution is to continue.

Also it is noted that the applicant alludes to using magnetocaloric (self cooling) superconductors in the specification. These superconductors are not recognized in the superconducting art. Also in the specification it is noted that the magnetocaloric superconductors may be powered by cold fusion, which is also not recognized as an operable power source. These notes further point to an inoperative device, and support the "101" rejection made.

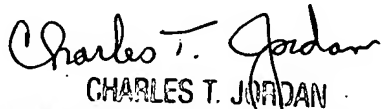
Conclusion

The examiner regrets the extension of prosecution on the present case, however a new grounds of rejection has been made. Accordingly this action has been made Non-Final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

tdc
February 24, 2003